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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,506	05/12/2008	Andrea Montani	33033-1081	3913
45263	7590	12/06/2010		
MITCHELL P. BROOK LUCE, FORWARD, HAMILTON & SCRIPPS LLP 600 West Broadway, Suite 2600 SAN DIEGO, CA 92101			EXAMINER MOMPER, ANNA M	
			ART UNIT 3657	PAPER NUMBER
			MAIL DATE 12/06/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,506

Applicant(s)

MONTANI ET AL.

Examiner

ANNA MOMPER

Art Unit

3657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/2010 has been entered.

Response to Amendment

2. Amendment to the claims received 10/26/2010 has been entered. Claims 1 and 7 have been amended.

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 7 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said elastic means act between said arms" as recited in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 6 recites "...characterized in that *it* comprises...". This limitation is indefinite as it is unclear as to what "it" refers to.
8. Claim 1 recites "...and mobile during functioning...". This limitation is indefinite as it is unclear as to what is required by "functioning".

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Giese (DE 42 43 451 A1).

As per claims 1 and 7, Giese discloses a tensioner (Fig. 1, Fig. 2, Fig. 4) for a belt of a drive of a motor vehicle, comprising:

A first (3) and second (3) idle pulleys designed to co-operated with respective runs of said belt;

A first arm (2) bearing said first idle pulley, said first arm being hinged about a mobile axis (7, Fig. 4);

a second arm hinged to said first arm about the mobile axis (7) and bearing said second pulley (3, Fig. 4);

elastic means (4) acting at least indirectly on said arms for tensioning said belt, and a mobile element (pin 7 inserted into bore 24 and bearing 25, 26) distinct from said first and second arm and mobile during functioning, said mobile axis being carried by said mobile element (the pin is part of the mobile element and is the mobile axis) said mobile element changing positions in reaction to changes in tensioning action on the belt runs, said position being determined by an equilibrium caused by said changes in

tensioning action (the mobile element is carried by the first arm which moves in response to changes in belt tension).

As per claim 2, Giese discloses the mobile element is hinged about a fixed axis (21, via first arm 2).

As per claim 3, Giese discloses the elastic means (4) are carried on the mobile element (Fig. 4, elastic means surround and radially supported by the mobile element).

As per claim 5, Giese discloses the elastic means acts between the arms (Fig. 1, Fig. 4, elastic means 4 is connected on one end to the first arm and on a second end to the second arm).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giese (DE 42 43 451 A1) in view of Oliver et al. (US 2003/0216203 A1).

As per claim 6, Giese fails to explicitly disclose arrest components co-operating with the arms for limiting opening of said arms with respect to one another.

Oliver et al. discloses belt tensioner having a first arm (124) and a second arm (125) for supporting a first (126) and a second (127) idler pulley, said first arm and said second arm being biased into engagement with a belt by means of a biasing element or spring (128), and wherein each arm has an arresting element (166, 167) for cooperating with an arresting element (130, 131) of the mount (122) for the purpose of limiting the movement of the arms.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tensioner of Giese to include arresting components for limiting opening of said arms with respect to one another, as taught by Oliver et al., for the purpose of limiting the motion of the arms.

Allowable Subject Matter

14. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANNA MOMPER whose telephone number is (571)270-5788. The examiner can normally be reached on M-F 6:00-3:30 (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

am

/Robert A. Siconolfi/
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